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FACEBOOK, INC. and MARK ZUCKERBERG

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FACEBOOK, INC. and MARK ZUCKERBERG,

Plaintiffs,

v.

CONNECTU, INC. (formerly known as CONNECTU, LLC), CAMERON WINKLEVOSS, TYLER WINKLEVOSS, DIVYA NARENDRA, PACIFIC NORTHWEST SOFTWARE, INC., WINSTON WILLIAMS, WAYNE CHANG, and DAVID GUCWA AND DOES 1-25,

Defendants.

Case No. 5:07-CV-01389-RS

DECLARATION OF THERESA A. SUTTON IN SUPPORT OF FACEBOOK'S MOTION TO COMPEL PACIFIC NORTHWEST SOFTWARE AND WINSTON WILLIAMS TO PROVIDE COMPLETE AND SUPPLEMENTAL RESPONSES TO FACEBOOK'S FIRST SET OF INTERROGATORIES NOS. 3 AND 4

Date: November 28, 2007
Time: 9:30 A.M.
Judge: Hon. Richard Seeborg

Dockets.Justia.com

I, Theresa A. Sutton, declare as follows:

1. I am an associate at the law firm of Orrick, Herrington & Sutcliffe, counsel for Plaintiffs Facebook, Inc. and Mark Zuckerberg in this action, and a member of the Bar of the state of California. I make this declaration in support of Facebook's Motion to Compel Pacific Northwest Software and Winston Williams to Provide Complete and Supplemental Responses to Facebook's First Set of Interrogatories Nos. 3 and 4. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. Attached hereto as **Exhibit A** is a true and correct copy of Facebook, Inc.'s First Set of Interrogatories to Defendant Pacific Northwest Software dated May 24, 2007.

3. Attached hereto as **Exhibit B** is a true and correct copy of Facebook, Inc.'s First Set of Interrogatories to Defendant Winston Williams dated May 24, 2007.

4. Attached hereto as **Exhibit C** is a true and correct copy of the relevant excerpts of the hearing transcript on Facebook, Inc.'s Motion for Expedited Discovery re: Personal Jurisdiction heard on May 23, 2007.

5. Attached hereto as **Exhibit D** is a true and correct copy of Defendant Pacific Northwest Software's Response to Facebook, Inc.'s First Set of Interrogatories dated June 8, 2007.

6. Attached hereto as **Exhibit E** is a true and correct copy of Defendant Winston Williams' Response to Facebook, Inc.'s First Set of Interrogatories dated June 8, 2007.

7. Attached hereto as **Exhibit F** is a true and correct copy of the relevant excerpts from the deposition of Winston Williams taken on June 19, 2007. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

8. Attached hereto as **Exhibit G** is a true and correct copy of a document produced by ConnectU, identified as CUCA 02972. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

9. Attached hereto as **Exhibit H** is a true and correct copy of a document produced by Pacific Northwest Software, identified as PNS01763. **[CONFIDENTIAL DOCUMENT**

SUBMITTED SEPARATELY UNDER SEAL]

10. I certify pursuant to Fed. R. Civ. P. 37(a)(2)(B) and N.D. Cal. Civ. L.R. 37-1(a) that counsel for Plaintiffs have engaged in multiple efforts to meet and confer beginning June 29, 2007 with counsel for PNS and Winston Williams concerning Facebook's position that PNS and Mr. Williams respond completely to Interrogatories Nos. 3 and 4 set forth in Facebook's First Set of Interrogatories to Defendants PNS and Winston Williams. However, despite Plaintiffs' efforts to meet and confer on the subject, they were unable to resolve the issues raised by the present motion.

11. On July 16, 2007, counsel for the parties discussed ongoing discovery issues. Scott Mosko represents both Defendants PNS and Winston Williams. During that conference, I pointed out that Winston Williams' deposition testimony indicated that it was possible to determine the number of emails sent by ConnectU to students at California schools, as well as the number of imports and invitations sent. See **Ex. F** at 156:17-158:15; 202:22-206:20.

12. I indicated that the information regarding the number of emails sent by ConnectU to students at California schools and the number of imports and invitations sent is available from the log files of the database maintained by PNS/ConnectU and should be produced. I also indicated that PNS should produce evidence of the number of emails it sent via Social Butterfly/importer.

13. For PNS, Mr. Mosko responded to me that PNS reviewed all of the locations it would have expected to find electronic files, and produced everything to Plaintiffs.

14. On September 12, 2007, I sought confirmation from PNS and Mr. Williams' counsel that they would supplement their interrogatory responses, based on Mr. Williams' deposition testimony.

15. On September 14, 2007, Mr. Mosko indicated that Mr. Williams could provide no additional information because he no longer had access to the PNS servers. Mr. Mosko offered a declaration from Mr. Williams saying he could provide no additional information. Mr. Mosko also indicated that PNS had performed a "detailed search" and he would investigate further with PNS regarding Mr. Williams' testimony.

16. On September 25, 2007, I inquired into the status of PNS' promised investigation. I also asked when Plaintiffs could expect an answer as to whether PNS and Mr. Williams would supplement their interrogatory responses. Counsel for PNS and Mr. Williams did not respond to this inquiry.

17. October 4, 2007, Mr. Mosko sent me an email indicating that PNS located additional files that may concern ConnectU. He indicated that PNS was in the process of investigating these files and would produce non-privileged documents responsive to Plaintiffs' document requests, if PNS finds any.

18. One week later, I sought confirmation from PNS on when it thought it might complete its investigation of the additional files and whether PNS and Mr. Williams would supplement their interrogatory responses. As of the date of this filing, no response has been made.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 17th day of October, 2007, at Boston, Massachusetts.

/s/ Theresa A. Sutton /s/
Theresa A. Sutton

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on October 17 2007.

Dated: October 17, 2007

Respectfully submitted,

/s/ Theresa A. Sutton /s/

Theresa A. Sutton